

04-11857  
WGY

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

United States District Court	District of Massachusetts	
Name (under which you were convicted): Alexander Cordero	Docket or Case No. COURT 1:01CR10469-017-WGY	
Place of Confinement: FPC-Talladega	Prisoner No.: 05119-070	
UNITED STATES OF AMERICA	Movant (include name under which you were convicted) v. ALEXANDER CORDERO	

**MOTION**

1. (a) Name and location of court that entered the judgment of conviction you are challenging: UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS
2. (a) Date of the judgment of conviction (if you know): \_\_\_\_\_  
(b) Date of sentencing: June 19, 2003
3. Length of sentence: 87 months
4. Nature of crime (all counts): Conspiracy To Possess w/ the Intent To Distribute U.S.C. 21 846
5. (a) What was your plea? (Check one)
 

(1) Not guilty  (2) Guilty  (3) Nolo contendere (no contest)

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. If you went to trial, what kind of trial did you have? (Check one)      Jury       Judge only

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes  No
8. Did you appeal from the judgment of conviction? Yes  No
9. If you did appeal, answer the following:
- (a) Name of court: UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT
- (b) Docket or case number (if you know): 03-1967
- (c) Result: Appeal was dropped in order to file a 2255 motion
- (d) Date of result (if you know): Judgement entered April 7, 2004
- (e) Citation to the case (if you know): \_\_\_\_\_
- (f) Grounds raised: District Court erred by adopting probation office recommendation that no sentencing consideration for "acceptance of responsibility" be given on the basis of police contact and not arrest as stated previously by probation officer. Appeal was dropped (voluntarily dismissed) Judgement entered April 7, 2004
- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes  No
- If "Yes," answer the following:
- (1) Docket or case number (if you know): \_\_\_\_\_
- (2) Result: \_\_\_\_\_
- (3) Date of result (if you know): \_\_\_\_\_
- (4) Citation to the case (if you know): \_\_\_\_\_
- (5) Grounds raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?
- Yes  No
11. If your answer to Question 10 was "Yes," give the following information:
- (a) (1) Name of court: \_\_\_\_\_
- (2) Docket or case number (if you know): \_\_\_\_\_
- (3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes  No

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes  No

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes  No

(2) Second petition: Yes  No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**GROUND ONE: INEFFECTIVE ASSISTANCE OF COUNSEL**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

PETITIONER ALLEGES THE DISTRICT COURT DENIED HIM HIS DUE PROCESS RIGHTS BY USING THE PREPONDERANCE OF THE EVIDENCE STANDARD TO DETERMINE HIM INELIGIBLE FOR THE "ACCEPTANCE OF RESPONSIBILITY" DOWNWARD DEPARTURE, WHICH HAD AN EXTREMELY DISPROPORTIONATE EFFECT ON HIS SENTENCE

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: Appeal was dropped on (voluntarily dismissed) on April 7, 2004

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

\_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

## GROUND TWO: INEFFECTIVE ASSISTANCE OF COUNSEL

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

SENTENCE MUST BE SET ASIDE WHERE DEFENDANT DEMONSTRATED  
THAT FALSE INFORMATION FORMED PART OF THE BASIS FOR THE SENTENCE,  
THUS DENYING THE PETITIONER HIS RIGHT TO DUE PROCESS

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**(b) Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: Appeal was dropped (voluntarily dismissed) April 7, 2004

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**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

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(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

\_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**GROUND THREE: INEFFECTIVE ASSISTANCE OF COUNSEL**

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(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):  
DEFENSE ATTORNEY'S FAILURE TO REQUEST EVIDENTIARY HEARING OR FAILING TO CALL WITNESS' TO CHALLENGE INFORMATION CONTAINED IN THE PRESENTENCE REPORT WAS PREJUDICIAL TO PETITIONER, CONSTITUTING A CLEAR INSTANCE OF INEFFECTIVE ASSISTANCE OF COUNSEL, THEREFORE REQUIRING RELIEF UNDER 28 U.S.C. §2255  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

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(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

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Docket or case number (if you know): \_\_\_\_\_

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Date of the court's decision: \_\_\_\_\_

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Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

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(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

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**GROUND FOUR: INEFFECTIVE ASSISTANCE OF COUNSEL**

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(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

PETITIONER WAS PREJUDICED BY GOVERNMENT'S BREACH OF PLEA  
AGREEMENT AND COUNSEL'S FAILURE TO ADDRESS THIS AT SENTENCING  
OR HIS FAILURE TO REQUEST EVIDENTIARY HEARING IN REGARDS TO  
BREACH OF PLEA

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**(b) Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: Appeal Voluntarily dismissed April 7, 2004

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**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

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(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

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Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

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(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13. Is there any ground in this motion that you have not previously presented in some federal court?

If so, which ground or grounds have not been presented, and state your reasons for not presenting them: These grounds would have been presented to the U.S. Court of Appeals for The First Circuit but the appeal was voluntarily dismissed to file this motion.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes  No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Steven DiLibrio  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) At arraignment and plea: Joseph Voccolla  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(c) At trial: Joseph Voccolla  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(d) At sentencing: Joseph Voccolla  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(e) On appeal: Darla Jean Mondou, Upton, Massachusetts

(f) In any post-conviction proceeding: \_\_\_\_\_

(g) On appeal from any ruling against you in a post-conviction proceeding: \_\_\_\_\_

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes  No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes  No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: \_\_\_\_\_

(b) Give the date the other sentence was imposed: \_\_\_\_\_

(c) Give the length of the other sentence: \_\_\_\_\_

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes  No

18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\* \_\_\_\_\_

\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
  - (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
  - (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
  - (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: Petitioner asks that the sentence be vacated and he be resentenced at a Criminal History Category 2, Offense Level 25 (this is with the 3-points for acceptance or any other relief to which movant may be entitled. of responsibility petitioner feels he is entitled to).

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Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on August 19, 2004 (month, date, year).

Executed (signed) on August 19, 2004 (date).

Alexander Cordova  
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion. \_\_\_\_\_

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IN FORMA PAUPERIS DECLARATION  
U.S. Court of Appeals for The First Circuit  
[Insert appropriate court]

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Petitioner is preparing a Memorandum of Points and Authorities in Support of Pro-se Motion Pursuant to 28 U.S.C. §2255 and will supply it in a timely fashion.

**VERIFICATION AND CERTIFICATE OF SERVICE**

U.S. DISTRICT COURT  
DISTRICT OF MASS.

2004 AUG 23 P 2:59

In the nature of 28 U.S.C. §1746(1), the petitioner, hereby attests to the best of his knowledge <sup>the current</sup> information and all matters of law and fact as set out above are true and correct. That under the penalty of perjury under the laws of the state wherein this executed, that he has placed 2 true and correct copies of the foregoing in accordance of Houston v. Lack, 487 U.S. 266 (1988), this motion is deemed filed and served as dated, being executed at the Federal Prison Camp - Talladega, PMB - 2000, Talladega, Alabama 35160, by placing it into first class mail, with sufficient postage affixed, prepaid and properly addressed to the following:

JOHN JOSEPH MOAKLEY  
U.S. COURTHOUSE  
ATT: CLERK OF COURTS  
1 COURTHOUSE WAY  
BOSTON, MA. 02210

OFFICE OF THE U.S. ATTORNEY  
ATT: HEIDI E. BRIEGER  
U.S. COURTHOUSE  
1 COURTHOUSE WAY  
BOSTON, MA 02210

Dated: *August 19, 2004*

Respectfully submitted,



Alexander Cordero  
#05119-070  
PMB-2000  
Talladega, AL 35160